THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 11th October, 2006

W.P.No.20862 of 2004

Between:

M. Sudhakar Gupta … Petitioner

and

The Commissioner for Cooperation
and Registrar of Cooperative
Societies, Andhra Pradesh,
Hyderabad and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.20862 of 2004

ORDER:

The short question that falls for consideration, in this Writ Petition, is whether the respondents have no power to conduct an enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') into the affairs of Vasavi Cooperative Urban Bank Limited, Hyderabad.

It appears that the Vasavi Cooperative Urban Bank Limited has been registered under the provisions of the Act. However, it is a financing Bank as defined under Section 2(f) of the Act, which reads as under:

> " 'financing bank' means a society, the main object of which is to assist any affiliated or other society by giving loans or advancing moneys; and includes any scheduled bank as defined in the Reserve Bank of India Act,1934 (Central Act 2 of 1934) and such other body corporate or financial institution as may be notified by the Government from time to time, which gives financial or other aid to a society."

Chapter VII of the Act deals with audit, inquiry, inspection and surcharge. Section 51 of the Act reads as under:

> "**51. Inquiry:**-- The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of members of the society, hold an inquiry or direct some person authorised by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall

be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid:

Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the bye laws of a society and the action of the society in placing the inquiry report alongwith the findings of the Registrar, the Registrar shall not be precluded from taking follow up action as may be required on the basis of inquiry report:

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negativing the findings of the inquiry:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of four months for completion of inquiry for a further period not exceeding two months.

Explanation:- ……..”

Through the summons dated 8-10-2003 of the 2nd respondent, an enquiry under Section 51 of the Act, into the affairs of Vasavi Cooperative Urban Bank Limited, with reference to the allegations pointed out by the Reserve Bank of India inspection report, was sought to be conducted and the petitioner was directed to appear before the 2nd respondent at 10.00 a.m. on 16-10-2003 at Vasavi Cooperative Urban Bank Limited, Head Office Building, Malakpet, Hyderabad.

According to the petitioner, the 2nd respondent has no jurisdiction or authority under the Act to proceed with the enquiry, after expiry of statutory period of four months, without there being an extension granted by the 1st respondent for a further period not exceeding two months. Even assuming that the period was extended

by two months, the same expired by 30-6-2004; therefore, the 2nd respondent has no jurisdiction or authority to proceed with the enquiry under Section 51 of the Act. Apart from this, learned counsel for the petitioner has raised the question formulated above.

Learned counsel for the petitioner contended that in view of the Full Bench Judgment of this Court reported in **M. BABU RAO v. DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES**[1], the authorities under the Act have no power whatsoever, particularly to conduct an enquiry under Section 51 of the Act into the affairs of the Vasavi Cooperative Urban Bank Limited. Firstly, the Vasavi Cooperative Urban Bank Limited is a financing bank as defined under Section 2(f) of the Act and it is under the control of the Reserve Bank of India and is governed by Banking Regulation Act,1949 and any inquiry into the affairs of the Bank shall be done only by the RBI and/or the Government under the Banking Regulation Act. Secondly, merely because Vasavi Cooperative Urban Bank Limited is registered under the Act, the authorities cannot assume any power whatsoever to enquire into the affairs of the Bank. Vasavi Cooperative Urban Bank Limited is purely a financing bank and it is under the control of RBI and governed by the Banking Regulation Act. In the said Judgment, the Full Bench of this Court held as under:

> "129. On the analysis above, we conclude, declare and hold:
>
> a. That recovery of monies (whether called a debt, arrears or by any other name) due to a banking institution including a Co-operative Bank is a matter that integrally falls within the core and substantative area of the legislative field ***Banking*** in Entry-45, List-I of the Seventh Schedule of the Constitution.
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> b. The above subject matter is therefore excluded from

the State legislative field in Entry-32, List-II of the Seventh Schedule.

c. Recovery of monies due to a Co-operative Bank is not a matter that falls within the incidental and ancillary areas of the State legislative field in Entry-32, List-II of the Seventh Schedule.

d. A Co-operative Bank as defined in Section 5(cci) of the Banking Regulation Act, 1949 (as amended by Act d23 of 1965) is a ***Bank*** and a ***Banking Company*** within the meaning of Section 2(d) & (e) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

e. A Tribunal constituted under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 has exclusive jurisdiction, powers and authority to entertain and decide applications from a Co-operative Bank for recovery of debts due to such bank, subject to the pecuniary limits of jurisdiction specified by or under the said Act.

f. Section 71(1) of the 1964 Act in so far as it expressly confers power on the Registrar to issue a certificate for recovery of arrears of any sum advanced by a financing bank to its members, is beyond the legislative competence of the State.

g. The words "***or financing bank"*** in Section 71(1) of the Andhra Pradesh Co-operative Societies Act, 1964 expressly result in the provisions of the Section transgressing the State's legislative limits. These words being severable are therefore declared invalid.

h. The provisions of Section 61 and 71 {*after striking down of the words in Section 71(1)*} are restrictively construed as excluding any jurisdiction, powers or authority in the Registrar in respect of recovery of debts or arrears due to a Co-operative Bank, its members or others which are advanced lent or otherwise made over to such member or person, during the course of the banking business of such Co-operative Bank.

i. (a) No claim, application or other proceedings

lodged or instituted before the Registrar, by a Co-operative Bank for recovery of the amount/debt due from a member or other person pursuant to advances made in the course of its banking business could be entertained or determined by the Registrar.

(b) Any award or order passed, certificate issued or an order in execution proceedings, by the Registrar on any claim or application of a Co-operative Bank, is patently and inherently without jurisdiction, null, void and inoperative.

j. During the pendency of these writ petitions, by virtue of various court orders certain amounts have been deposited by some of the writ petitioners. At no point of time these writ petitioners have disputed the liability or the amount already deposited with the banks in pursuance of the orders of the Court. Therefore, we direct that the amounts deposed shall be retained by the concerned banks and adjusted against the liabilities, if any, that remain to be determined pursuant to proceedings initiated by the respective banks in accordance with this judgment.

k. In view of the declaration in this judgment, the respondent-banks are at liberty to proceed with the recovery of debts due to them, before the appropriate forum and under the appropriate law, inaccordance with this judgment.

l. As the proceedings initiated before the Registrar or any other authority under the 1964 Act were *bona fide* and as considerable time had been consumed in the litigation in this case also, the respondents-banks shall be entitled to set off the period spent in pursuing their claims before the Registrar or other fora and before this Court, in computing the period for filing appropriate applications/claims before the appropriate authority/Tribunal."

and declared that

"53. Factually some of the petitioners are seen to

have pleaded before the Registrar that he has no jurisdiction to entertain the claims of the respondent-Banks. The challenge by the petitioners in this batch of cases is to the validity of claim or execution proceedings initiated by the respondent-Banks and the awards or certificates issued by the Registrar, in purported exercise of powers under the 1964 Act. The issue whether a State legislature was incompetent to legislate with regard to recovery of debts due to Co-operative banks and the issue whether in view of the provisions of the 1993 Act, the provisions of the 1964 Act empowering the Registrar to initiate proceedings or pass awards or grant certificates for recovery of debts are invalid are issues which are not within the adjudicative domain of the Registrar, a creature of the 1964 Act. These issues go to the root of the Registrar's jurisdiction and also involve pure questions of law and jurisdiction. No decision of the Registrar could be conclusive on such issues nor can a decision of the Registrar be declared final and irreviewable by this Court on the jejune grounds of waiver or estoppel."

"58……The mere fact that the Central Government notified a cooperative bank as defined in Sec.5 (cci) of the 1949 Act as a 'bank' within the meaning of the said expression in Sec.2 (e) of the 2002 Act does not permit the singular inference that the expression 'bank' as defined in the 2002 Act along with the expression 'banking company' as defined therein, does not include a cooperative bank. The notification could have been issued by the Central Government by way of abundant caution to foreclose any doubt as to whether the expression 'bank' in the 2002 Act includes a cooperative bank. In any event an administrative construction, even if it be so, of an expression in the 2002 Act cannot be a reliable guidance to the construction of a similar expressions in the 1993 Act. Further, for reasons elaborately considered and recorded earlier in this judgment we have concluded that cooperative bank falls within the expression 'bank' in the 1993 Act. In the circumstances we are not inclined to treat the Central Government notification dated 28.1.2003 as a compelling guide to the construction of the provisions of the 1993 Act or to hold that the

expression ‘bank’ in the said Act excludes a ‘cooperative bank’.

Further, it was held that the provisions under Sections 61 and 71(1) of the Act were made by the State Legislature under Entry 45 of List I, and Entry 32 of List II of VII Schedule of the Constitution of India. Recovery of debts due to Cooperative Banks fall within the area of legislative field ‘Banking’ in Entry 45 of List I and, therefore, excluded from State Legislative field in Entry 32 of List II. It is not a matter falling within the incidental and ancillary areas of State Legislative field in Entry 32 of List II. The power conferred on the Registrar of Cooperative Societies under Section 61 of the Act to adjudicate the disputes as to amounts due to financing bank and issue of certificate under Section 71(1) for recovery of such sums is beyond the legislative competence of the State. The words ‘or financing bank’ in Section 71(1) of the Act which transgress State’s legislative limits and which words are severable by employing doctrine of severability, are struck down and declared as invalid instead of striking down the entirety of Section 71(1) of the Act. The power of the Registrar under those provisions, thus, restricted excluding the power to order for recovery of amounts lent by Cooperative Banks during the course of their banking business.

On the basis of the above, learned counsel for the petitioner submitted that once Vasavi Cooperative Urban Bank Limited is a ‘financing bank’ as per the definition under Section 2(f) of the Act, the jurisdiction of the Registrar of Cooperative Societies under Section 51 of the Act to enquire into the affairs of the Bank is beyond the legislative competency of the State. Therefore, the respondents could not have ventured to commence the enquiry under Section 51 of the Act under the impugned Proceedings. Registrar has no power to

conduct an enquiry, particularly into the banking activity of the Vasavi Cooperative Urban Bank Limited. Insofar as Vasavi Cooperative Urban Bank Limited is concerned, except the banking activity, there is no other activity taken up by it. Therefore, any enquiry, which is required to be conducted into the affairs of the Bank, can be conducted only by the RBI under the Banking Regulations Act and the Registrar of Cooperative Societies has no power whatsoever to inquire into the affairs of the Bank. May be, the authorities are entitled to inquire into the administrative affairs, but not into the banking activities of the Bank.

Respondent No.1 filed a detailed counter affidavit denying the allegations made by the petitioner and stating *inter alia* that the RBI had conducted inspection under Section 35 of the Banking Regulation Act (AACS) into the financial position of Vasavi Cooperative Urban Bank Limited as on 30-6-2002 and pointed out various violations and deficiencies in the functioning of the Bank. Further, some representations were also received in the Office of the 1st respondent as to the irregularities in the affairs of the Bank. Therefore, the 1st respondent through his Proceedings dated 31-12-2002 ordered for an inquiry into the affairs of the Bank under Section 51 of the Act authorizing the 2nd respondent-Joint Registrar of Cooperative Societies to conduct an enquiry and submit a report within 60 days. However, the 2nd respondent could not complete the inquiry within the stipulated period, since the Board of Directors of the Bank, who had committed irregularities in sanction of loans, were under judicial custody for investigation by CBCID against the criminal charges framed against them and important records of the Bank were also seized by the CBCID. Some Officers of the Bank responsible for irregularities in the Bank absconded for a longer period; as a result of

which, further examination of records and recording of depositions of concerned could not be taken up. After long lapse of time, the Directors were released on bail. Thereafter, the inquiry was renewed including examination of all concerned Directors and Officers. In fact, some of the Directors were not cooperative and there was turmoil in the Bank for retrenchment of staff. Depositors also started Dharnas, protests before the Bank preventing normal functioning of the Bank for want of payment of deposits. Therefore, considerable delay has taken place in completing the inquiry. The Enquiry Officer further proceeded to continue the enquiry while trying to get all the relevant records for further probe into all aspects like huge loans advanced, sanctioning authority, guarantors to huge loans, monetary and credit policy, securities mortgaged, relevant legal documents, observance of cash reserve and statutory liquidity ratios, funds management, priority sector advances, RBI inspection reports and audit reports. Thus, there was some delay in conducting the inquiry, which is neither wanton nor wilful.

Insofar as the power of the authorities is concerned, learned Government Pleader appearing for the respondents has stated that RBI itself submitted a report as to the irregularities committed by the Bank and on the basis of the said report, the enquiry under Section 51 of the Act was commenced. Since the society is registered under the Act, the contention of the learned counsel for the petitioner that the authorities cannot inquire, under Section 51 of the Act, into to the affairs of the Bank is untenable. The Judgment reported in **M. BABU RAO**'s case (supra) has no relevance to the facts of this case.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

It is an admitted fact that Vasavi Cooperative Urban Bank Limited has been registered under the provisions of the Act. It is true, in the Full Bench Judgment in **M. BABU RAO**'s case (supra) the words 'or financing Bank' in Section 71(1) of the A.P. Cooperative Societies Act, were expressly declared as invalid and Section 71 of the Act, after striking down these words, is restrictively construed as excluding any jurisdiction, power or authority in the Registrar in respect of recovery of debts or arrears due to a Cooperative Bank, its members or others, which are advanced, lent or otherwise made over to such member or person, during the course of banking business of such Cooperative Bank. Thus, it is clear that the whole question before the Full Bench was whether the Registrar of Cooperative Societies is having jurisdiction to entertain and decide a dispute between a loanee and the Cooperative Bank under the Act with respect to recovery of amount in excess of Rs.10.00 lakhs in view of the bar of jurisdiction contained in Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act,1993 read with the applicable provisions of the Banking Regulation Act. Under those circumstances, the Full Bench held that the Registrar of Cooperative Societies has no power to recover monies due to the Banking institutions including a cooperative Bank and is a matter that integrally falls within the core and substantive area of legislative field 'Banking' in Entry 45 of List I of Schedule VII of the Constitution. Therefore, it is excluded from the State Legislative field in Entry 32 of List II of Schedule VII. Except this, nothing much had come up before the Full Bench.

The Full Bench has not dealt with the provisions of Section 51 of the Act, which is purely an administrative inquiry into the affairs of the Bank. May be, this being a Cooperative Bank, without touching the

financial activity of the Bank, any enquiry under Section 51 of the Act may not be complete. The very existence of the Bank is traceable to A.P. Cooperative Societies Act. Any enquiry conducted under the Banking Regulation Act, either by the RBI or by the Government of India does not exclude the power of the Registrar from inquiring into the affairs of the Bank under Section 51 of the Act. In fact, insofar as enquiry commenced in the impugned proceedings is concerned, it is on the basis of a report of the RBI inspection under Section 35 of the Banking Regulation Act. Simply because 'financing bank' is excluded from Section 71 of the Act for the purpose of recovery of dues etc., it does not mean that no inquiry can be conducted by the authorities under the Act into the affairs of the society (Bank) under Section 51 of the Act. The exclusion, as discussed in the Full Bench Judgment, is only in view of the provisions of the Recovery of Debts Due to the Banks and Financial Institutions Act,1993 vis-à-vis Banking Regulation Act. That deals with exclusively recovery of the dues from the loanees etc., which is governed by the Banking Regulations Act, instructions issued by the RBI and the Recovery of Debts Due to the Banks and Financial Institutions Act,1993; whereas, the inquiry under Section 51 of the Act is purely administrative in its nature and this is not an inquiry for recovery of the amounts. May be, it is an enabling provision to inquire into the matter for the purpose of fixing responsibility by proceeding under Section 60 of the Act. In other words, under Section 51 of the Act, inquiry can be gone into all the affairs of the society, except as to the mode of recovery of the amount due to it as a financing Bank. That apart, no inconsistency with that of the Banking Regulation Act for conducting an inquiry under Section 51 of the Act is brought to the notice of the Court. On the other hand, learned counsel for the petitioner fairly conceded that there is no

inconsistency but since the Vasavi Cooperative Urban Bank Limited is a financing bank, the Registrar has no authority to conduct inquiry under Section 51 of the Act.

From the above discussion, the irresistible conclusion that could be drawn is that an inquiry under Section 51 of the Act can be held by the Registrar of Cooperative Societies or some person authorized by him, even if the Vasavi Cooperative Urban Bank Limited is a financing bank within the meaning of Section 2(f) of the Act. Insofar as the delay in conducting inquiry is concerned, the 1st respondent, in his counter affidavit, has explained how and why the delay in taking up the enquiry had occurred. The reasons furnished by the 1st respondent for the delay in taking up the inquiry are cogent and cannot be said to be either illegal or irrational.

For all the above reasons, the Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

11-10-2006

prk

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[1] 2005(4) ALT 327 (FB)